79-1942

No.

Supreme Court, U. S.
FILED
JUN 10 1980
MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
TERM, 1980

EARL DAVID SHAFFER,

Petitioner,

vs.

DAVID M. COOK, Oklahoma County District Judge, Oklahoma County, State of Oklahoma,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO REVIEW OKLAHOMA SUPREME COURT DECISION

EARL DAVID SHAFFER
709 N.W. 89th
Oklahoma City, Ok. 73114
(405) 848-2185
Petitioner, Pro Se

PIP, Inc. (405) 232-6494

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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1980

No.

EARL DAVID SHAFFER,

Petitioner,

vs.

DAVID M. COOK,

Respondent.

Petitioner hereby prays that a Writ of Certiorary issue to review the prejudice of the respondent and failure of the Oklahoma Supreme Court to follow the law and order him disqualified by reason of his obvious prejudice. To review and remand that respondent is disqualified to be a judge over petitioner's case.

OPINION BELOW

The respondent refused to disqualify himself upon Application and Notice by Petitioner. The Application to Assume Original Jurisdiction was Denied by the Oklahoma Supreme Court. Therefore, no opinion was written or published.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. § 1257. That specifically United States Constitution Article Fourteen, Section One have been violated by the Oklahoma Courts.

QUESTIONS FOR REVIEW

There are several basic laws that were disregarded by the

Courts below which are at issue and briefly stated as follows:

1. Whether the Oklahoma Courts can deny to this petitioner his right to equal protection and due process of the Oklahoma case law relating to bias and prejudice of a judge.

2. Whether the Oklahoma Supreme Court failed to comply with this citizen's basic Constitutional right and case law by not assuming Original Jurisdiction and ordering the respondent to be disqualified and without jurisdiction by reason of unconstitutional prejudice.

3. Whether respondent violated his duty and basic Constitutional law by not disqualifying himself when his prejudice was exhibited in obvious ways on several occasions beyond any reasonable doubt.

CONSTITUTIONAL PROVISIONS AND STATUTES

1. Oklahoma Statutes Article 2, Section 6, Book 1, Page 53 (1971)

2. Oklahoma Statutes Title 20, Section 1403, Page 1818, Book 2 (1971)

3. Oklahoma Statutes, Canon 3, Judicial Conduct, 1979 Supplement Page 103, Book 1, Code became effective January 1, 1975

4. United States Constitution Article Fourteen, Section 1

5. State ex rel. Larcey v. Sullivan et al, 207 Okl. 128, 248 P.2d 239

6. Hearn et al v. Miller, District Judge, 33 P.2d 506

7. Tegler v. State, 130 P. 1164

8. State ex rel Conley et al v. Parks, District Judge 239 P. 941

See Appendix Exhibit 2 for pertinent text of the above law.

STATEMENT OF CASE

This petitioner filed a civil lawsuit for Malpractice and

Conspiracy against an Oklahoma attorney named Stephen Jones. This case was filed in the Oklahoma County District Court on October 26, 1976, and was assigned the case number of CJ-76-3316. The respondent was an Oklahoma County District Judge and was assigned said case. The case came for hearing on several occasions before this respondent as the judge.

This petitioner had searched and was unsuccessful in attempts to find an attorney to represent him in Case CJ-76-3316. Subsequently, this petitioner was forced to appear Pro Se before said respondent on each and every occasion his interests were represented before respondent.

That this petitioner was intimidated and witnessed numerous prejudicial acts of conduct by respondent against this petitioner because of his personal appearances before respondent in said case. The respondent's prejudicial attitude is exemplified by his statement directed to this petitioner during a court hearing on February 18, 1977 as follows:

> "I can't dismiss this case with prejudice, but I wish I could."

This comment was among several other prejudicial remarks by respondent directed to petitioner.

That subsequent appearances before respondent caused this petitioner to be further intimidated and subjected to numerous other acts of prejudice by the respondent acting as judge in Case CJ-76-3316. The acts of prejudice included comments, utterances, facial expressions, mannerisms, and unlawful orders on each occasion. The record is full of the unconstitutional acts committed by respondent against this petitioner. There can be no doubt that resondent is prejudiced.

Among the numerous acts of prejudice which the record reflects are the following acts as briefly stated:

1. Signed an order on April 22, 1977 falsely stating that there was no evidence in the record concerning the alleged conspiracy. The record in fact contained a sworn to petition

and interrogatories stating circumstances of conspiracy.

2. Signed an order on October 28, 1977 intimidating and ordering this petitioner (plaintiff) to retain counsel or in the alternative he would dismiss the action of Case CJ-76-3316.
3. The respondent was requested to voluntarily disqualify himself and arrogantly refused to do so. That motions to disqualify the respondent were denied and refused on November 2, 1979 and November 9, 1979.

This petitioner filed an Application to assume Original Jurisdiction and a Petition for Writ of Mandamus with an attached brief in support thereof. This Application and Writ was assigned Case Number 54,691 before the Oklahoma Supreme Court. This was intended to disqualify the respondent because of his failure and refusal to do so upon proper presentations. The Petition and Writ was heard on February 12, 1980. The Oklahoma Supreme Court judge was presented evidence of prejudice from the transcripts and record of Case CJ-76-3316. The Oklahoma Supreme Court denied the Application to assume Original Jurisdiction by an order dated March 10, 1980. This order denied this petitioner his fundamental, basic, and elementary Constitutional right to a fair and impartial trial before a fair and impartial (the respondent) judge.

The Oklahoma Constitution and case law in spirit and intent has been ignored. Petitioner also alleged his United States Constitutional right under Article Fourteen, Section 1, on page 2 of the Application to assume Original Jurisdiction. See March 10, 1980 order in Appendix as Exhibit 1.

The failure of the Oklahoma Supreme Court to perform their duty and order this respondent disqualified by reason of prejudice has caused the need for this petition. The respondent has subsequently signed additional unlawful orders dated March 21, 1980 that violate this petitioner's basic Constitutional rights.

ARGUMENT FOR ALLOWING WRIT

The appellate jurisdictions of this Court carries with it the

responsibility to review and correct obvious violations of any citizen's Constitutional rights. This instant case involves the very basic, elementary, and fundamental Constitutional right. The right of a citizen to appear in Court before a judge that is not prejudiced. The Oklahoma Supreme Court has disregarded the law and failed to enforce this fundamental right. This creates odious overtones of Oklahoma justice system, and is another bizzare example of that system. Because of their unconstitutional attitude the burden of redress has been passed to this Court.

This Court must accept their responsibility to enforce such a fundamental right to prevent miscarriage of justice in our system of courts. Gross injustice has occurred and is repugnant to our Constitution. Respondent is disqualified by fact and law.

This Court must allow Writ of Certiorari in order to reverse, vacate, and set aside the orders of the Oklahoma Courts. Then remand the case with instructions that this case be assigned and tried in a fair and impartial manner. That the Oklahoma Courts follow the law in spirit and intent.

Respectfully submitted
and sincerely applied,

EARL DAVID SHAFFER
709 N.W. 89th
Oklahoma City, Okla. 73114
(405) 848-2185

CERTIFICATE OF MAILING

This undersigned hereby certifies that a true and correct copy of the foregoing instrument was mailed to opposing counsel on record, K. Nicholas Wilson, attorney, 2700 First National Center, Oklahoma City, Oklahoma 73102, on the 6th day of June, 1980. Certified Receipt No. 047466

Earl David Shaffer
EARL DAVID SHAFFER

APPENDIX

Exhibit 1

IN THE
SUPREME COURT OF THE STATE OF OKLAHOMA

Monday, March 10, 1980

THE CLERK IS DIRECTED TO ISSUE
THE FOLLOWING ORDERS:

54,691 - Earl David Shaffer v. David M. Cook, Okla. County Dist. Judge, Okla. County, State of Okla., Stephen S. Jones. Application to Assume Original Jurisdiction denied.

/s/ Robert E. Lavender
Chief Justice

APPENDIX

Exhibit 2
Text of Law

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1. Oklahoma Constitution Article 2, Section 6 § 6. Court of Justice open — Remedies for Wrongs - Sale, denial or delay. — The Courts of justice shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

2. Oklahoma Statute Title 20, Section 1403, Book 2, Page 1818 (1971). Disqualification of judge, claim of — Mandamus — Any party to any cause pending in a court of record may in term time or in vacation file a written application with the clerk of the court, *setting forth the grounds or facts upon which the claim is made that the judge is disqualified, and request said judge so to certify, after reasonable notice to* the other side, same to be presented to such judge, and upon his failure so to do within three days before said cause is set for trial, application may be made to the proper tribunal for mandamus requiring him so to do.

3. Oklahoma Statutes, Canon 3, Judicial Conduct, Effective January 1, 1975. 1979 Supplement Page 103 of Book 1.
   C. Disqualification
      (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned,
      .....

4. United States Constitution Article Fourteen, Section 1.
   §1 ..... No state shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

5. *State ex rel Larcey v. Sullivan et al,* 207 Okl. 128, 248 P.2d 239 at 240 states:

Syllabus by the Court

1. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge.

2. It is the duty of courts to scrupulously guard the right of a litigant to impartiality of a judge and a judge should refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question.

at Page 244

"2. In *Heard v. Sullivan,* Judge, supra, we said that where there are circumstances of such a nature as to cause doubts as to a judge's partiality, bias or prejudice, it is his duty to disqualify, notwithstanding the fact that he personally believes himself to be unprejudiced, unbiased and impartial."

6. *Hearn et al v. Miller, District Judge,* 33 P.2d 506.

Syllabus by the Court

2. Statements made by a judge concerning one who is then or thereafter becomes a party to an action in his court, which statements are made at great length and in detail and indicate deep feeling of bias or prejudice, are sufficient to disqualify the judge to sit and preside over the trial of a cause in which such person is a party.

Further, at 507 states:

> "a judge who has theretofore in an extended public statement made such forceful criticism of the party as to indicate a sincere bias or deep-seated prejudice. Where this has been done the judge should not in justice to the litigant sit in the trial of his case. *London v. Ogden,* supra.
>
> "yet the question is not so much whether he feels and insists that he would be able to give a fair and impartial trial, as it is to whether his utterances and actions have been such as to preclude reasonable men from feeling that a fair and impartial trial, without bias or prejudice, could be had before him."

7. *Tegler v. State,* 130 P. 1164 at 1167.
"The words "prejudice" and "impartial" have no narrow, technical meaning in a legal sense, but are words commonly used in the everyday affairs of life, and their meaning is well understood by all persons of ordinary intelligence. Webster's New International Dictionary defines "prejudice" as "an opinion or judgment formed beforehand, or without due examination; a prejudgment."

"Prejudice is prepossession; judgment formed beforehand without examination."

8. *State ex rel Conley et al v. Parks, District Judge,* 239 P. 941, at 943.

Syllabus by the Court

"Where a verified petition for mandamus, supported by affidavits, is filed in this court by an accused under the provisions of Section 2633, Comp. Laws, 1921, to require a district judge by reason of bias and prejudice against the accused to certify his disqualification to preside at his trial, and such petition and supporting affidavits sufficiently set out a state-

ment of facts showing bias and prejudice, and no denial of such facts are made in the response to the alternative writ issued on said petition, such statement of facts will be taken as admitted and the writ awarded."

Supreme Court, U. S.
FILED
SEP 29 1980
MICHAEL RODAK, JR., CLERK

No. 79-1942

In the Supreme Court of the United States

OCTOBER TERM, 1980

EARL DAVID SHAFFER,
Petitioner,

VERSUS

DAVID M. COOK, Oklahoma County District Judge,
Oklahoma County, State of Oklahoma,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO REVIEW OKLAHOMA SUPREME COURT DECISION

JAMES D. FELLERS
(*Attorney of Record for Intervenor*)
K. NICHOLAS WILSON
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
2700 First National Center
Oklahoma City, Oklahoma 73102
(405) 232-0621
Attorneys for Intervenor (below),
Stephen S. Jones

October, 1980

No. 79-1942

In the Supreme Court of the United States

OCTOBER TERM, 1980

EARL DAVID SHAFFER,
Petitioner,

VERSUS

DAVID M. COOK, Oklahoma County District Judge,
Oklahoma County, State of Oklahoma,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO REVIEW OKLAHOMA SUPREME COURT DECISION

MEMORANDUM

Petitioner herein filed original action No. 54,691 in the Supreme Court of Oklahoma asking that court to assume original jurisdiction in connection with a lawsuit then pending in the District Court of Oklahoma County, Oklahoma, in which Petitioner herein, Earl David Shaffer, was plaintiff and Stephen S. Jones, Esq., was defendant. Respondent herein, the Honorable David M. Cook, was the District Judge to whom that Oklahoma County case was assigned.

Petitioner sought to have the Supreme Court of Oklahoma disqualify Judge Cook, in which action Stephen S. Jones was permitted to intervene. Petitioner's Application to Assume Original Jurisdiction was denied by the Supreme Court of the State of Oklahoma on March 10, 1980, a copy

of that Order being marked Exhibit "A" and attached in the Appendix hereto.

Petitioner's Petition for a Writ of Certiorari was docketed in the Supreme Court of the United States on the 10th day of June, 1980 (see Notice marked Exhibit "B" and attached in the Appendix hereto). Said Petition was due in the Supreme Court of the United States 90 days after the denial of the Application to Assume Original Jurisdiction by the Supreme Court of Oklahoma on March 10, 1980, or by June 8, 1980.

Inasmuch as the 90th day fell on a Sunday, the Petition could have been timely filed on Monday, June 9, 1980, pursuant to the provisions of Rule 29.1 of the Rules of the Supreme Court of the United States. However, said Petition was not filed until June 10, 1980, one day out of time, and therefore said Petition should be denied as not being timely filed.

Intervenor below, Stephen S. Jones, prays that said Petition for a Writ of Certiorari be denied as not timely filed.

Respectfully submitted,

JAMES D. FELLERS
(*Attorney of Record for Intervenor*)
K. NICHOLAS WILSON

FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
2700 First National Center
Oklahoma City, Oklahoma 73102
(405) 232-0621

Attorneys for Intervenor (below),
Stephen S. Jones

October, 1980

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three (3) true and correct copies of the foregoing Memorandum were mailed to Petitioner, Earl David Shaffer, 709 Northwest 89th Street, Oklahoma City, Oklahoma 73114, this ____ day of October, 1980.

All parties required to be served have been served.

James D. Fellers

APPENDIX

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
MAR 10 1980
Ross N. Lillard, Jr
CLERK

Monday, March 10, 1980

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

52,698 Linda A. Wilde v. Charles W. Wilde.
Appeal dismissed for want of diligence in its prosecution.

53,406 Sharon Kaye Gibson and Billy Gibson v. Dr. Marvin H. Herd.
Petition for review of certified interlocutory order denied.

54,244 (Consol. with 54,248) In The Matter of the Application of John V. Anderson, et al. v. The Banking Board of the State of Okla., et a
Certiorari denied.

54,691 Earl David Shaffer v. David M. Cook, Okla. County Dist. Judge, Okla. County, State of Okla., Stephen S. Jones.
Application to Assume Original Jurisdiction denied.

54,707 Wayne Scott Harrington v. Clifford E. Hopper, Judge of the Dist. Court in and for Tulsa County, State of Okla.
Application to Assume Original Jurisdiction and Petition for Writ of Prohibition denied.

54,730 Lucille Hamlin Freeman v. The Hon. Bill Ed Rogers.
Application to Assume Original Jurisdiction and Petition for Writ of Prohibition denied. CONCUR: Lavender, C.J., Irwin, V.C.J., Doolin, Hargrave, Opala, JJ. DISSENT: Williams, Hodges, Simms, JJ. NOT PARTICIPATING: Barnes, J.

54,807 Don R. & Laura L. Watson v. Hon. Jess I. Miracle, Dist. Judge.
Motion to Stay denied. Application to Assume Original Jurisdiction denied.

54,780 Sharon Parrish, and James Parrish v. The Hon. Samuel C. Fullerton, Dist. Judge, et al.
Respondents granted to April 5, 1980 to file brief.

54,783 Red River Railroad Authority, Inc., etc. v. The Hon. Jan Eric Cartwright, etc.
Any party hereto may show cause, if any there be, within 15 days of this date why Floyd W. Taylor, Esq. may not appear herein as special counsel for the Governor.

Chief Justice

EXHIBIT A

SUPREME COURT OF THE UNITED STATES

EARL DAVID SHAFFER
~~Appellant~~ Petitioner

vs.

DAVID M. COOK
~~Appellee~~ Respondent

No. 79-1942

To NICHOLAS WILSON, Counsel for Appellee—Respondent:

YOU ARE HEREBY NOTIFIED that an appeal—a petition for a writ of certiorari—in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the 10TH day of JUNE, 19 80.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed by you, or other counsel who will represent your party, with the Clerk at or before the time you file your response to our petition or jurisdictional statement.

Only those counsel who file an appearance form can expect to receive notification of the Court's action(s) in this case.

CERTIFICATE OF MAILING

This undersigned hereby certifies that a true & correct copy of the foregoing instrument was mailed to opposing counsel on record on the 7 day of July 19 80

Earl David Shaffer

Receipt # 047459

EARL DAVID SHAFFER
Counsel for ~~Appellant~~ Petitioner

709 NW 89th STREET
Number and Street

OKLAHOMA CITY, OKLAHOMA 73114
City, State and Zip Code

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice should not be filed in the Supreme Court.

CO-75

EXHIBIT B